

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRIA BEAUTY, INC.,
Plaintiff,

vs.

RADIANCY, INC.,
Defendant.

CASE NO. CV-10-5030 RS (NJV)

**[PROPOSED] PROTECTIVE
ORDER**

RADIANCY, INC.,
Counterclaim Plaintiff,

vs.

TRIA BEAUTY, INC.,
Counterclaim Defendant,

and

KIMBERLY KARDASHIAN,
Counterclaim Defendant.

Proceedings and Information Governed.

1. This Order (“Protective Order”) is made under Fed. R. Civ. P. 26(c) and governs any Discovery Materials designated as Confidential or Confidential Attorneys’ Eyes Only, as those terms are defined below, furnished by Plaintiff, Defendant, or Counter-Defendant (each hereinafter a “Party”) to any other Party in the above styled and numbered case (the “Litigation”). This Protective Order further applies to any non-party (“Third Party”) who produces documents or things in connection with this Litigation regardless of whether such production is made pursuant to subpoena.

Definitions.

2. (a) “Discovery Materials” means anything produced or provided by any Party to another Party or by any Third Party to a Party in this Litigation, including, but not limited to, documents, things, deposition testimony, responses to interrogatories, responses to requests for admission, responses to requests for production of documents, deposition transcripts and videos, deposition exhibits, and other writings or things produced, given, served, or filed in this Litigation, as well as any information extracted from Discovery Materials, including, but not limited to, copies, excerpts, abstracts, compilations, analyses, summaries, descriptions, testimony, conversations, or pre-trial presentations by a Party or its counsel to or in court or in other settings that might reveal Discovery Materials to unauthorized persons, as well as all other forms of information containing, reflecting, or disclosing such information.

(b) “Producing Party” or “Designating Party” means a Party to this Litigation, or any Third Party, on behalf of which documents, things, or information are furnished, produced, or disclosed, whether voluntarily or in response to a request for discovery or by court order, during the course of this Litigation.

(c) “Receiving Party” means a Party to which documents, things, or information are furnished, disclosed, or produced during the course of this Litigation.

(d) A designation of “Confidential” shall mean that the Discovery Material so designated includes, discloses, or comprises, in whole or in part, trade secrets or commercial

1 information that is not publicly known and is of technical or commercial advantage to its
 2 possessor, or other information required by law or agreement to be kept confidential.

3 (e) A designation of “Confidential Attorneys’ Eyes Only” or “Highly Confidential”
 4 shall mean that the Discovery Material so designated includes, discloses, or comprises, in whole
 5 or in part, information that the Producing Party deems especially sensitive, which may include,
 6 but is not limited to, confidential research and development, financial, technical, marketing, or
 7 any other sensitive or trade secret information.

8 (f) “In-House Counsel” means attorneys (and their support staffs, including
 9 paralegals, legal secretaries, data entry clerks, legal clerks) who are employees of a Party.

10 (g) “Outside Counsel” means attorneys (and their support staffs, including
 11 paralegals, legal secretaries, data entry clerks, legal clerks) who are not employees of a Party but
 12 who are retained to represent or advise a Party in this action.

13 (h) “Counsel” (without qualifier) means Outside Counsel and In-House Counsel.

14 (i) “Expert” is a person with scientific, technical, or other specialized knowledge,
 15 skill, experience, training, or education in a matter pertinent to the action who has been (1)
 16 retained or specially employed by a Party or its Counsel to provide expert testimony at trial, or
 17 (2) retained or specially employed by a Party or its Counsel in anticipation of litigation or to
 18 prepare for trial and who is not expected to be called as a witness at trial. This definition
 19 includes a professional jury or trial consultant retained in connection with this action. No
 20 Party’s Expert, however, may be (A) currently employed or under contract with the retaining
 21 Party, or (B) currently employed or under contract with a competitor who currently does or
 22 plans to design, manufacture, distribute, or sell one or more light- or heat-based hair removal
 23 products or acne treatment products; without prior approval by the opposing Party, and said
 24 approval shall not be unreasonably delayed or withheld.

25 (j) “Litigation Support Vendors” are persons or entities retained by a Party or its
 26 Counsel to provide litigation support services (*e.g.*, photocopying, videotaping, translating,
 27 hosting, processing, mediation creation, preparing and supporting exhibits or demonstrations,
 28 organizing, storing, retrieving data in any form or medium, document coding, image scanning,

couriering and delivery services, serving process, court reporting, etc.) and their employees and subcontractors. No Party's Litigation Support Vendor, however, may be a current or former employee of any Party, or of a competitor who designs, manufactures, distributes, or sells light or heat based hair removal products or acne treatment products.

(k) "Protected Health Information" or "PHI" shall have the same scope and definition as set forth in 45 CFR 160.103 and 160.501 (regardless of whether any party constitutes a covered entity under 45 CFR 160.103), including, but not limited to, health information, including demographic information, relating to either (i) the past, present or future physical condition of an individual, (ii) the provision of care to an individual, or (iii) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

Designation and Maintenance of Information.

3. Confidential and Confidential Attorneys' Eyes Only information does not include, and this Protective Order does not apply to (1) information that is already lawfully in the knowledge or possession of the Receiving Party, unless that Party is already bound by agreement not to disclose such information, or (2) information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

4. Discovery Materials produced during the course of this Litigation within the scope of paragraph 2(d) above may be designated by the Producing Party as containing Confidential information by placing on each page and each thing a legend substantially as follows:

"CONFIDENTIAL" or "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER"

In the event that a Party chooses to produce documents in native format, the designation under this section may be made by (1) producing the documents in a database and including the designation in a separate database field, (2) affixing a label to the media on which the native documents are being produced, (3) including the designation in the native document's file name, or (4) providing notice of such designation by any other means agreed to in writing by both the Receiving Party and the Producing Party. To the extent a Receiving Party intends to use a

document produced in native format for depositions, pleadings, trial, or for any other purpose where the identification of individual pages is necessary, that Party shall number the individual pages of the document (such that, for example, with respect to information produced in native format and marked with the bates number "227543," a Party wishing to use that information in a deposition will number the individual pages as "227543.1, 227543.2, ...").

5. Discovery Materials produced during the course of this Litigation within the scope of paragraph 2(e) above may be designated by the Producing Party as containing Confidential Attorneys' Eyes Only information by placing on each page and each thing a legend substantially as follows:

"CONFIDENTIAL ATTORNEYS' EYES ONLY" or "CONFIDENTIAL ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER"

In the event that a Party chooses to produce documents in native format, the designation under this section may be made by (1) producing the documents in a database and including the designation in a separate database field, (2) affixing a label to the media on which the native documents are being produced, (3) including the designation in the native document's file name, or (4) providing notice of such designation by any other means agreed to in writing by both the Receiving Party and the Producing Party. To the extent a Receiving Party intends to use a document produced in native format for depositions, pleadings, trial, or for any other purpose where the identification of individual pages is necessary, that Party shall number the individual pages of the document (such that, for example, with respect to information produced in native format and marked with the bates number "227543," a Party wishing to use that information in a deposition will number the individual pages as "227543.1, 227543.2, ...").

6. A Party may designate Discovery Materials disclosed at a deposition as Confidential or Confidential Attorneys' Eyes Only by (a) notifying counsel for all Parties in writing of such designation prior to the deposition; (b) requesting the reporter to so designate the transcript or any portion of the transcript at the time of the deposition; or (c) if no such designation is made prior to or at the time of the deposition, any Party will have twenty one (21) calendar days after receipt of the deposition transcript to designate, in writing to the other

Parties and to the court reporter, whether the transcript or any portion thereof is to be designated as Confidential or Confidential Attorneys' Eyes Only. During this twenty-one (21) calendar day period, the undesignated transcript or portions thereof must be treated as Confidential Attorneys' Eyes Only, unless the Producing Party consents to less confidential treatment of all or some of the transcript. If no such designation is made prior to or at the time of the deposition or within this twenty one (21) calendar day period, the entire deposition will be considered devoid of Confidential or Confidential Attorneys' Eyes Only information. Each Party and the court reporter must attach a copy of any final and timely written designation notice to the transcript and each copy of the transcript in its possession, custody or control, and the portions designated in such notice must thereafter be treated in accordance with this Protective Order. Counsel for a Party or non-party providing Discovery Material during a deposition may request that all persons, other than persons entitled by this Protective Order to have access to the information, leave the deposition room during that portion of the deposition. Failure of any person to comply with such a request will constitute sufficient justification for the witness to refuse to answer the question pending resolution of the issue by the Court.

7. It is the responsibility of outside counsel of record for each Party to maintain materials containing Confidential or Confidential Attorneys' Eyes Only information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

Failure to Designate or Claim Privilege.

8. (a) The failure to designate Discovery Materials in accordance with this Protective Order or to withhold information, documents, or other things as subject to the attorney-client privilege, the attorney work product doctrine, or other applicable immunity, privilege, or exemption from discovery, will not be deemed to waive a later claim as to its confidential or privileged nature. In the case of a failure to designate Discovery Materials under the Protective Order, such failure shall not preclude the Producing Party from making appropriate designations at a later date in writing and with particularity. The newly designated

1 information must be treated by any Receiving Party in accordance with its new designation from
2 the time the Receiving Party is notified in writing of the change.

3 (b) If a Producing Party discloses to a Receiving Party information that is subject to
4 the attorney-client privilege, the attorney work product doctrine, or that is otherwise privileged
5 or immune from discovery, the Producing Party shall, upon learning of such disclosure, so
6 advise the Receiving Party in writing.

7 (c) Should a Receiving Party reasonably believe that a Producing Party produced
8 privileged Discovery Materials, the Receiving Party shall promptly notify the Producing Party
9 in writing. The Producing Party shall respond within fourteen (14) calendar days confirming the
10 privilege status of the Discovery Materials in question.

11 (d) If a Producing Party notifies a Receiving Party that produced Discovery
12 Materials are privileged, the Receiving Party shall return all of the identified Discovery
13 Materials within fourteen (14) calendar days of receipt of the notice from the Producing Party
14 that the Discovery Materials in question are privileged. The notice from the Producing Party
15 shall include a privilege log for the Discovery Materials in question. No Party to this Litigation
16 shall thereafter assert that such disclosure waived any claim of attorney-client privilege, attorney
17 work product, or other privilege or immunity. The Party returning such produced Discovery
18 Materials may seek production of any such documents in accordance with the Federal Rules of
19 Civil Procedure (based on information independent of the content of the allegedly privileged
20 materials in question), but in so doing may not assert that the production by the Producing Party
21 waived any claim of attorney-client privilege, attorney work product, or other privilege or
22 immunity. Outside counsel of record shall not be required to delete information that may reside
23 on their respective firms' electronic back-up systems that are over-written in the normal course
24 of business.

25 **Challenge to Designations.**

26 9. A Receiving Party may challenge a Producing Party's designation of information
27 as Confidential or Confidential Attorneys' Eyes Only at any time. Any Receiving Party
28 disagreeing with a designation may request in writing that the Producing Party change the

1 designation. A Receiving Party that elects to initiate a challenge must do so in good faith and
 2 explain in writing the basis for its belief that the confidentiality designation was improper. The
 3 Producing Party will then have fourteen (14) calendar days after receipt of a challenge notice to
 4 advise the Receiving Party whether or not it will change the designation. If the Parties are
 5 unable to reach agreement after the expiration of this fourteen (14) calendar day time-frame, the
 6 Receiving Party may at any time thereafter seek an order to alter the confidential or privileged
 7 status of the designated information. Until any dispute under this paragraph is ruled upon by the
 8 Court, the Producing Party's designation will remain in full force and effect, and the
 9 information will continue to be accorded the designated level of confidential treatment required
 10 by this Protective Order. The Producing Party shall have the burden of persuading the Court
 11 that the designation of materials as Confidential or Confidential Attorneys' Eyes Only is
 12 appropriate.

13 **Disclosure and Use of Confidential Information.**

14 10. Absent agreement in writing by the Producing Party or Order of the Court,
 15 information designated as Confidential or Confidential Attorneys' Eyes Only may only be used
 16 for purposes of preparation, trial, and appeal of this Litigation. Upon the conclusion of this
 17 action, a Party must comply with paragraph 20 (Conclusion of Litigation), below. This
 18 Protective Order has no effect upon and shall not apply to (a) any Producing Party's use of its
 19 own Confidential or Confidential Attorneys' Eyes Only materials for any purpose, (b) any
 20 person's use of documents or other information developed or obtained independently of
 21 discovery in this Litigation for any purpose, or (c) non-confidential documents produced in this
 22 Litigation.

23 11. Nothing in this Protective Order shall bar or otherwise restrict any attorney from
 24 rendering advice to a Party-client in this Litigation and, in the course thereof, relying upon such
 25 attorney's knowledge of Confidential or Confidential Attorneys' Eyes Only information;
 26 provided, however, that counsel shall not disclose the substance of Confidential or Confidential
 27 Attorneys' Eyes Only information in a manner not specifically authorized under this Protective
 28 Order.

12. Except as prohibited by paragraph 10 above, and unless otherwise ordered by the Court or permitted in writing by the Designating Party, disclosure of information designated **Confidential** may be disclosed by the Receiving Party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order: (a) officers, directors and employees of the Receiving Party who are required in good faith to provide assistance in the conduct of this Litigation, including any settlement discussions; (b) In-House Counsel to whom disclosure is reasonably necessary for the purposes of the litigation; (c) Outside Counsel of record for the Receiving Party to whom disclosure is reasonably necessary for the purposes of this Litigation; (d) Experts and Litigation Support Vendors to whom disclosure is reasonably necessary for this Litigation and who have first signed the applicable "Confidentiality Agreement" (Exhibit A or B, as applicable), the signed original of which shall be maintained by the Party who retained the Expert or Litigation Support Vendor; (e) the Court and its personnel; (f) those individuals permitted under paragraphs 16 (a) and (b) for the purposes of deposition or examination at trial; provided third-party witnesses in this action and their attorneys have signed the "Confidentiality Agreement" that is attached hereto as Exhibit A (signed originals shall be marked as exhibits to the deposition and maintained in the same manner as other exhibits). If a third-party witness or the third-party witness's attorney declines to sign the "Agreement to Be Bound by Protective Order," the parties shall promptly present the issue to a court of appropriate jurisdiction. In the meantime, any relevant deposition shall proceed to the extent practicable, and resume upon such terms as the court orders or the Parties and third-party witness (and the third-party witness's attorney) agree.

13. Except as prohibited by paragraph 10 above, and unless otherwise ordered by the Court or permitted in writing by the Designating Party, disclosure of information designated **Confidential Attorneys' Eyes Only** may be disclosed by the Receiving Party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order: (a) Outside Counsel of record for the Receiving Party to whom disclosure is reasonably necessary for the purposes of this Litigation; (b) Experts and Litigation Support Vendors to whom disclosure is reasonably necessary for this Litigation and who have first signed the

applicable “Confidentiality Agreement” (Exhibit A or B, as applicable), the signed original of which shall be maintained by the Party who retained the Expert or Litigation Support Vendor; (c) the Court and its personnel; (d) those individuals permitted under paragraphs 16 (a) and (b) for the purposes of deposition or examination at trial; provided third-party witnesses in this action and their attorneys have signed the “Confidentiality Agreement” that is attached hereto as Exhibit A (signed originals shall be marked as exhibits to the deposition and maintained in the same manner as other exhibits). If a third-party witness or the third-party witness’s attorney declines to sign the “Agreement to Be Bound by Protective Order,” the Parties shall promptly present the issue to a court of appropriate jurisdiction. In the meantime, any relevant deposition shall proceed to the extent practicable, and resume upon such terms as the court orders or the Parties and third-party witness (and the third-party witness’s attorney) agree.

14. Outside counsel of record is responsible for the adherence by third-party vendors engaged by such counsel to the terms and conditions of this Protective Order. Outside counsel of record may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit B.

15. A Receiving Party may disclose Confidential or Confidential Attorneys' Eyes Only information to a person who is not already allowed access to such information under this Protective Order if: (a) the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a designee under Fed. R. Civ. P. 30(b)(6); or (b) outside counsel of record for the Party designating the material agrees in writing that the material may be disclosed to the person. Disclosure of material pursuant to this paragraph does not constitute a waiver of the confidential status of the material so disclosed.

Disclosure to Witnesses.

16. (a) Any person currently or formerly employed by a Party, retained as an expert witness by a Party, or designated by a Party as a witness under Fed. R. Civ. P. 30(b)(6) may be examined upon deposition or at trial concerning any Discovery Materials designated as

1 Confidential or Confidential Attorneys' Eyes Only by the party that employs, retains, or
2 designates said witness..

3 (b) Any person other than those identified in paragraph 16(a) who is or may be a
4 witness may be examined upon deposition or at trial concerning any Discovery Materials
5 marked Confidential or Confidential Attorneys' Eyes Only, only if the document or other
6 Discovery Material indicates on its face that the person was an author, addressee or recipient of
7 the document, the document came from such person's files, or prior deposition testimony
8 reveals that the person was provided with or had access to the document.

9 **Non-Party Information.**

10 17. The existence of this Protective Order must be disclosed to any Third Party
11 producing Discovery Materials in the Litigation who may reasonably be expected to desire
12 confidential treatment for such Discovery Materials. Any such person may designate
13 documents, tangible things, or testimony confidential pursuant to this Protective Order.

14 **Filing Documents with the Court.**

15 18. All transcripts of depositions, exhibits, answers to interrogatories, pleadings,
16 briefs, and other documents submitted to the Court that have been designated as Confidential or
17 Confidential Attorneys' Eyes Only, or that contain information so designated, shall be filed
18 under seal in a manner prescribed by the Court for such filings.

19 **No Prejudice.**

20 19. Producing or receiving confidential information, or otherwise complying with the
21 terms of this Protective Order, will not: (a) operate as an admission by any Party that any
22 particular Confidential or Confidential Attorneys' Eyes Only Discovery Materials contains or
23 reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice
24 the rights of a Party to object to the production of information or material that the Party does not
25 consider to be within the scope of discovery; (c) prejudice the rights of a Party to seek a
26 determination by the Court that particular materials be produced; (d) prejudice the rights of a
27 Party to apply to the Court for further protective orders; (e) prevent the Parties from agreeing in
28 writing to alter or waive the provisions or protections provided for in this Protective Order with

1 respect to any particular information or material; or (f) operate as an admission by any Party that
 2 any particular Confidential or Confidential Attorneys' Eyes Only information is admissible.

3 **Protected Health Information.**

4 20. As permitted under 45 C.F.R. §164.512, the parties and their attorneys shall be
 5 permitted to use Protected Health Information contained in Discovery Materials solely for
 6 matters reasonably connected with this litigation. Those uses include, but are not limited to,
 7 disclosure to: the parties; their attorneys of record; the attorneys' firms (i.e., attorneys, support
 8 staff, and consultants); the parties' insurers, experts, consultants, court reporters, copy services,
 9 vendors; and jurors. At the conclusion of the litigation as to any defendant (which shall be
 10 defined as the point at which final orders disposing of the entire case as to any defendant have
 11 been entered, or the time at which all trial and appellate proceedings have been exhausted as to
 12 any defendant), that defendant and any person or entity in possession of Discovery Materials
 13 containing PHI shall destroy any and all copies of such Discovery Materials, except the
 14 remaining defendants in the litigation, and persons or entities receiving Discovery Materials
 15 containing PHI from those defendants, may retain such Discovery Materials in their possession
 16 until the conclusion of their involvement in the litigation. Discovery Materials produced during
 17 the course of this Litigation within the scope of paragraph 20 above may be designated by the
 18 Producing Party as containing PHI by placing on each page and each thing a legend
 19 substantially as follows: **PROTECTED HEALTH INFORMATION.** Any such documents
 20 will also be designated either "Confidential" or "Confidential Attorneys' Eyes Only" pursuant
 21 to paragraphs 4 and 5 of this Protective Order.

22 **Conclusion of Litigation.**

23 21. Within sixty (60) calendar days after entry of final judgment in this Litigation,
 24 including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal
 25 pursuant to a settlement agreement or otherwise, each Party or other person subject to the terms
 26 of this Protective Order is under an obligation to destroy or return to the Producing Party all
 27 Discovery Materials designated Confidential or Confidential Attorneys' Eyes Only, and to
 28 certify to the Producing Party that this destruction or return has been completed. However,

1 Outside Counsel of record for any Party is entitled to retain an archive file of all Discovery
 2 Materials that do not contain Protected Health Information, provided that such Materials are
 3 maintained and protected in accordance with the terms of this Protective Order. Outside
 4 Counsel of record shall not be required to delete information that may reside on their respective
 5 firms' electronic back-up systems that are over-written in the normal course of business.

6 **Other Proceedings.**

7 22. By entering this Protective Order and limiting the disclosure of Discovery
 8 Materials in this Litigation, the Court does not intend to preclude this or another court from
 9 finding that information may be relevant and subject to disclosure in another case. Any person
 10 or Party subject to this Protective Order who may be subject to a motion to disclose another
 11 Party's information designated under this Protective Order must promptly notify that Party of
 12 the motion so that the Party may have an opportunity to appear and be heard on whether that
 13 information should be disclosed.

14 **Remedies.**

15 23. It is Ordered that this Protective Order will be enforced by the sanctions set forth
 16 in Fed. R. Civ. P. 37(b) and any other sanctions as may be available to the Court, including the
 17 power to hold Parties or other violators of this Protective Order in contempt. All other remedies
 18 available to any person injured by a violation of this Protective Order are fully reserved.

19 24. Any Party may petition the Court for good cause shown if the Party desires relief
 20 from a term or condition of this Protective Order.

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23 ///

1 The undersigned counsel of record stipulate that the Court should enter the above
2 Protective Order as an order of the Court, and further stipulate that the Protective Order shall
3 constitute a binding contract among the Parties and their counsel.

4 **AGREED AND STIPULATED TO:**

5 Dated: October 11, 2011

ROPES & GRAY LLP

6
7 By: 

Peter M. Brody
Alexandra J. Roberts
Mariel Goetz
700 12th Street, NW, Suite 900
Washington, DC 20005-3948

Thad A. Davis
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284

10
11
12
13 Dated: October 11, 2011

PROSKAUER ROSE LLP

14
15 By: 

Brendan J. O'Rourke
Kristin H. Neuman
Victoria L. Loughery
Dolores F. DiBella
Eleven Times Square
New York, New York 10036-8299

Robert H. Horn
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206

16
17
18
19
20
21 Dated: October 11, 2011

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

22
23 By: 

Michael J. Kump
808 Wilshire Boulevard, Third Floor
Santa Monica, California 90401-1894

24
25
26 **IT IS SO ORDERED**

27 Dated: _____

28 _____
United States District Judge

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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION
10

11 TRIA BEAUTY, INC.,

12 Plaintiff and Counter-Defendant,

13 v.

14 RADIANCY INC.,

15 Defendant and Counter-Claimant.
16
17

Case No. 10-cv-05030-RS (NJV)

EXHIBIT A

**CONFIDENTIALITY AGREEMENT FOR
EXPERT, CONSULTANT, THIRD
PARTY WITNESS, OR EMPLOYEE OF
ANY PARTY**

18
19 I, _____ [print or type full name], of

20 _____ hereby affirm that:

21 Information, including documents and things designated as "Confidential" or
22 "Confidential Attorneys' Eyes Only," as defined in the Protective Order entered in this
23 Litigation, is being provided to me pursuant to the terms and restrictions of the Protective Order.
24 I have been given a copy of and have read the Protective Order.

25 I am familiar with the terms of the Protective Order and I agree to comply with and to be
26 bound by its terms. I submit to the jurisdiction of this Court for enforcement of the Protective
27 Order.
28

1 I agree not to use any Confidential or Confidential Attorneys' Eyes Only information
 2 disclosed to me pursuant to the Protective Order, except for purposes of this Litigation, and not
 3 to disclose any of this information to persons, other than those specifically authorized by the
 4 Protective Order, without the express written consent of the Party who designated the
 5 information as confidential or by order of the Court. I also agree to notify any stenographic,
 6 clerical or technical personnel who are required to assist me of the terms of this Protective Order
 7 and of its binding effect on them and me.

8 I understand that I am to retain all documents or materials designated as or containing
 9 Confidential or Confidential Attorneys' Eyes Only information in a secure manner, and that all
 10 such documents and materials are to remain in my personal custody until the completion of my
 11 assigned duties in this matter, whereupon all such documents and materials, including all copies
 12 thereof, and any writings prepared by me containing any Confidential or Confidential
 13 Attorneys' Eyes Only information are to be returned to counsel who provided me with such
 14 documents and materials.

15
 16 DATED: _____

17
 18 ADDRESS WHERE SIGNED: _____

19 _____
 20 _____
 21 _____

22
 23 PRINTED NAME: _____

24
 25 SIGNATURE: _____

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6
7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10
11 TRIA BEAUTY, INC.,

12 Plaintiff and Counter-Defendant,

13 v.

14 RADIANCY INC.,

15 Defendant and Counter-Claimant.
16
17

Case No. 10-cv-05030-RS (NJV)

18
19 **EXHIBIT B**

20 **CONFIDENTIALITY AGREEMENT**
21 **FOR THIRD-PARTY VENDORS**

22 I, _____ [print or type full name], of

23 _____ hereby affirm that:

24 Information, including documents and things designated as “Confidential” or
25 “Confidential Attorneys’ Eyes Only” as defined in the Protective Order entered in this
26 Litigation, is being provided to me pursuant to the terms and restrictions of the Protective Order.

27 I have been given a copy of and have read the Protective Order.

28 I am familiar with the terms of the Protective Order and I agree to comply with and to be
bound by its terms. I submit to the jurisdiction of this Court for enforcement of the Protective
Order.

1 I agree not to use any Confidential or Confidential Attorneys' Eyes Only information
2 disclosed to me pursuant to the Protective Order except for purposes of this Litigation and not to
3 disclose any of this information to persons, other than those specifically authorized by the
4 Protective Order, without the express written consent of the Party who designated the
5 information as confidential or by order of the Court.

6
7 DATED: _____

8
9 ADDRESS WHERE SIGNED: _____

10 _____
11 _____
12 _____

13
14 PRINTED NAME: _____

15
16 SIGNATURE: _____